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No. 06-882

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In The
# Supreme Court of the United States

RICHARD ROLLINS, et al.,

*Petitioners,*

v.

FIRST MISSIONARY BAPTIST CHURCH OF BALLWIN, et al.,

*Respondents.*

**On Petition For Writ Of Certiorari To The Missouri Court Of Appeals, Eastern District**

## BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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## QUESTION PRESENTED

May a state court, consistent with the First and Fourteenth Amendments to the Constitution, resolve a church property dispute according to neutral principles of law by ordering the election of directors to the board of directors of the not-for-profit corporation which owns the property in dispute and by using a directory listing the names of church members to determine eligible voters and avoiding inquiry into religious doctrine, ritual and practice.

## PARTIES TO THE PROCEEDING BELOW

Respondents wish to address a statement in the Petition For Writ of Certiorari ("Petition") that they perceive to be a misstatement. Respondents dispute Petitioners' characterization of themselves as spiritual leaders, deacons and officers of First Missionary Baptist Church. The proceeding which is now being appealed dealt only with the application of the Missouri Not For Profit Corporation Law. The trial court did not make any findings declaring the ecclesiastical offices, if any, held by Petitioners.

The lawsuit which initiated this proceeding was filed on behalf of the not-for-profit corporation First Missionary Baptist Church of Ballwin ("FMBC") by and through its board of trustees. The suit was filed by Anthony Barnes, Norma Clayton, Marva Gaylor, James Sheets, Kathy Simmons, Leonard White and George Fulgham.

Petitioners filed a third party claim individually and derivatively on behalf of the corporation FMBC. All the people who filed the original suit were named as third party defendants as were Gary Fields, Ernest Schell, David Lyons and Kenneth Worsham. Petitioners' third party claim sought to invalidate an election of corporate directors as violative of the notice provisions of the Missouri Not For Profit Corporation Law. Petitioners Richard Rollins, Press McDowell, Loyse Clay and Charlet Clay filed the third party claim together with another third party plaintiff, John Hibbler.

## RULE 29.6 STATEMENT

Respondents wish to address a statement in the Petition that they perceive to be a misstatement. Petitioners state in their Rule 29.6 Statement that they were sued as leaders and officers of First Missionary Baptist Church of Ballwin. The petition which initiated the lawsuit averred that Petitioners held no such offices and that petition states nothing about Petitioners being leaders of FMBC.

The not-for-profit corporation First Missionary Baptist Church of Ballwin has no parent corporations and no publicly held company owns any stock of the corporation.

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## STATEMENT OF THE CASE

This proceeding raises the question of whether a state court may, consistent with the First and Fourteenth Amendments to the Constitution, resolve a church property dispute using a neutral principles of law approach. This Court has previously answered that question in the affirmative. The Missouri Court of Appeals affirmed the trial court's judgment ordering an election of directors to the board of directors of the not-for-profit corporation which owned the property in dispute. Prior to that election, all five seats on the board of directors were vacant.

The trial court determined the voters who were eligible to vote for directors by using a church directory (Petitioners referred to the document as the "church roll") which the parties admitted contained the names of the members of the church. The church directory ("Directory") *was prepared by one of the Petitioners* just prior to the time that the dispute arose between the parties and just before this litigation was filed. The trial court did not consider any religious ritual or doctrine but simply consulted the Directory to determine who was eligible to vote.

Despite Petitioners' assertion to the contrary, the court did not determine which individuals "qualify" as church members. The court simply used the Directory to ascertain who was listed as a member. The court avoided the inquiries into religious beliefs and practices that Petitioners claim should have been made by the court.

As more fully stated below, the Respondents urge the Court to deny the Petition because this Court has established the law relevant to deciding the issue in this case and that law is well settled. The decision of the Missouri

Court of Appeals in this case comports in all respects with that law.

## STATEMENT OF FACTS

The Respondents in this appeal and others who support them comprise approximately 80 percent of the members of First Missionary Baptist Church of Ballwin ("Church" or "FMBC"). (Record 274; 584). The Petitioners are part of a small faction within the Church. (Record 274; 584). This appeal arises from the election, which the trial court ordered, of directors of the not-for-profit corporation, First Baptist Church of Ballwin.[1] In that election, five directors were elected. (Record 602-603). The directors who were elected received approximately 80 percent of the votes cast. Four of the five directors elected, Marva Gaylor, James Sheets, Kathy Simmons and Kenneth Worsham, are Respondents. The other director, David Grandison, is one of the majority of the members who support Respondents.

In 1961, the members of FMBC established a not-for-profit corporation which became the owner of FMBC's real estate, bank accounts and other assets. The corporation's articles of incorporation were filed under the Missouri Not For Profit Corporation Law. (Record 32-34).

[1] First Baptist Church of Ballwin is also known as First Missionary Baptist Church of Ballwin. The petition which initiated this litigation referred to the corporation as First Missionary Baptist Church of Ballwin a/k/a First Baptist Church of Ballwin, by and through its Board of Trustees.

In 2001 and early 2002, it became apparent to many members of FMBC that pastor Richard Rollins had used Church funds for many of his personal expenses. (Record 24; Supplemental Record 7). Many months of investigation and discussion culminated in the demand by the Church's Budget Committee for access to records in order to investigate these apparent improprieties by Mr. Rollins. Mr. Rollins and his few supporters refused to provide access to these records. (Supplemental Record 7). Ultimately, on March 31, 2006, the Circuit Court of St. Louis County, Division 31, entered a judgment against Petitioner Richard Rollins in the amount of $107,826.10 for the misappropriation of church funds. The judgment was in favor of Respondents and their supporters in Cause Number 04CC-58(J).

In 2002, growing increasingly dissatisfied and disappointed, the vast majority of the Church's members decided to safeguard the corporation's assets. On April 13, 2002, by a very lopsided vote (49 to 5), five Church members, four of whom are Respondents, were chosen for FMBC's Board of Trustees.[2] (Record 156-159). After the vote, Mr. Rollins continued to attempt to manage and control the property and assets of the corporation. The people who had received the majority of the votes in the election held on April 13, 2002, also tried to manage the property and assets. (Record 23-25).

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[2] Section 355.316.1, R.S.Mo., provides that the governing body of a not-for-profit corporation can be called a board of directors, a board of trustees, a board of regents, or a board of overseers. In this brief, the governing body will be referred to as the "Board" or the "directors." The Missouri Court of Appeals subsequently held that election invalid under the Missouri Not For Profit Corporation Law. *First Missionary Baptist Church of Ballwin v. Rollins*, 151 S.W.3d 846 (Mo. App. E.D. 2004).

The competing claims about the right to manage the assets led to the filing of a lawsuit seeking a declaration that the people who had received the majority of the votes in the election were entitled to possess FMBC records and assets. (Record 22-28). The suit named as defendants Richard Rollins, Press McDowell, John Hibbler, Loyse Clay and Charlet Clay and two banks which held the corporation's deposit accounts. (Record 22).

The suit, which was filed on May 22, 2002, was initiated by FMBC members, most of whom were part of the present group of Respondents,[3] through a petition filed on behalf of FMBC as a corporation, by and through its Board of Trustees. (Record 22-30). The petitioners sought relief as corporate trustees and not as religious or spiritual officers. (Record 22). The petition asked for injunctive relief and a declaratory judgment about who had the right to possess and control various assets, including real estate, historical records, financial records, bank books, membership rosters, bank accounts, gifts, donations and other funds. (Record 25-28).

The trial court granted the Motion for Interpleader brought by one of the banks, Commerce Bank, ordered the FMBC's funds deposited into the registry of the court and dismissed the bank from the lawsuit. (Record 74). The trial court ordered the other bank, U.S. Bank, to continue to hold the corporation's funds. (Record 73).

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[3] The petition was filed by Anthony Barnes, Norma Clayton, Marva Gaylor, James Sheets, Kathy Simmons, Leonard White and George Fulgham. All these people were later named as third party defendants, as were Gary Fields, Ernest Schell, David Lyons and Kenneth Worsham. (Record 98).

The Petitioners (sometimes hereinafter "Rollins Group") filed a third party petition for a declaratory judgment naming the Respondents as third party defendants. (Record 98). The third party petition asked the court to declare void the election of respondents as corporate directors and to appoint a receiver. (Record 98-101). Petitioners subsequently filed a motion for summary judgment alleging that the election held on April 13, 2002, was illegal because the notice given failed to comply with the not-for-profit corporation law. (Record 120-123). In both their third party petition and their motion for summary judgment, Petitioners treated the Church as a corporation. They based their claims on corporate law and not ecclesiastical doctrine, practices or customs. (Record 98-101; 120-123). In their third party petition, they stated that they "are asserting this claim derivatively . . . pursuant to Mo. Rev. Stat. Sec. 355.141(3) (giving former directors and derivative claimants their right to challenge a corporation's power to act)." (Record 99). They spoke of the corporate board of directors, and not of any ecclesiastical office or position. They requested that the trial court void the election which occurred on April 13, 2002, because it violated several sections of the not-for-profit corporation law. (Record 100). They did not mention any ecclesiastical basis for voiding that election. (Record 98-102).

On October 31, 2003, the trial court granted Appellants summary judgment on their third party petition. (Record 250-251). The order "reinstated [the Petitioners] as leaders of the Church," gave them control over FMBC's assets and its legal, financial and other matters, and awarded them attorney fees in the amount of $15,000.00. (Record 251). The order also ordered Respondents to return all church property, assets, documents, records and

bank accounts to Petitioners. (Record 251). Respondents appealed. (Record 253).

Pursuant to the court's order, Respondents returned to Petitioners all assets of the corporation that were in existence at the time of the election that occurred on April 13, 2002. (Record 274). However, Respondents believed that a bank account they had opened after April, 2002 at Bank of America should not be given to the Rollins Group. The account was opened after the election and it was funded through contributions from Respondents and their supporters. (Record 274-275). These members were able to raise money to fund not only this legal action, but also a separate lawsuit seeking reimbursement of church funds used by Mr. Rollins for his personal expenses. (Record 274).

After the trial court granted Petitioners summary judgment, Respondents were put on notice that Mr. Rollins might try to seize the bank account at Bank of America using the trial court's order and claiming he was entitled to all monies with the name First Missionary Baptist Church no matter the source of such funds. (Record 276). At that time, Respondents changed the name on the account to "Remnants – First Missionary Baptist Church" to prevent such an attempt. (Record 276).

The name "Remnants – First Missionary Baptist Church" was used only to rename a bank account. Respondents did not, as Petitioners suggest, found a new church.

On October 19, 2004, the Missouri Court of Appeals, Eastern District ("Court of Appeals") reversed the order of partial summary judgement. The Court of Appeals decided the appeal using the Missouri not-for-profit corporation

law exclusively and not by inquiring into religious practices and customs. The Court treated FMBC the same way the parties had throughout the lawsuit; as a corporate, not an ecclesiastical, entity. The Court of Appeals set aside the trial court's order that the Petitioners were leaders of the church for all legal, financial and other matters. Also reversed was the award of attorney fees to the Petitioners. The Court of Appeals found that the election of corporate directors held on April 13, 2002, was invalid under the Missouri not-for-profit corporation law because of defective notice. *First Missionary Baptist Church of Ballwin v. Rollins*, 151 S.W.3d 846 (Mo. App. E.D. 2004). ("First Missionary I").

The Court of Appeals stated that Section 355.136.1 R.S.Mo. provides that all corporate powers shall be exercised and the corporation shall be managed under the authority and direction of its board of directors.[4] *Id.* at 851. There was no evidence of a valid election of directors and no evidence that the Petitioners were properly elected to the board of directors. The Court noted that Petitioners claimed that they were "leaders of the Church," but stated that "Section 355.316.1 does not provide for a body entitled leaders of the Church" to have authority to control a not-for-profit corporation. *Id.* The Court of Appeals concluded that allowing the Petitioners to be in charge of managing the church's corporate affairs would result in a violation of Missouri Statutes. *Id.* The Court of Appeals stated:

> We cannot place the Church under the control of a body that is not its proper board of directors.

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[4] All statutory references are to R.S.Mo. 2000.

> Therefore, we cannot put the [Petitioners][5] in control of the Church. *Id.*

The Court of Appeals remanded the cause so that the trial court could order a meeting to be held according to Sections 355.081.1 and 355.241.1(1) of the not-for-profit corporation law to properly elect a board of directors. *Id.* at 852. On February 22, 2005, the Respondents[6] filed a Motion for the Court to Order a Meeting and Election of Directors ("Motion").

The trial court appointed St. Louis Attorney Hardy Menees as Special Master. (Record 397). The court issued an Order of Reference which stated that Mr. Menees shall report on all matters at issue in complying with the mandate of the Court of Appeals. (Record 398-399).

The Special Master requested, and the parties presented, briefs and reply briefs. Respondents' brief, which was entitled Movants' Brief, contained, in Exhibits 4 through 7 attached thereto, deposition testimony of Petitioners Richard Rollins and Charlet Clay. In that testimony, Mr. Rollins and Ms. Clay admitted that the 2002 Church Directory ("Directory" or "Church Directory") contained a list of all the members of FMBC and that the children listed in parentheses after their parent's names in the Directory were members if they had attained the age of eighteen years. (Supplemental Record 58-64).

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[5] The Court of Appeals referred to the members of the Rollins Group as the McDowell Representatives. The same people comprise each group.

[6] All of the people named as third party defendants, other than Anthony Barnes, were named as Movants in that Motion.

On August 24, 2005, the Special Master issued his report entitled "Report of the Special Master" ("Report"). (Record 499-525). The Special Master stated in the Report that the Directory shall serve as the most fair and equitable list of members of the Church. (Record 503). On September 23, 2005, Petitioners filed objections to the Report. (Record 577-578). On September 29, 2005, after a hearing, the court overruled those objections. (Record 579-581).

On October 22, 2005, under the supervision of the Special Master and in accordance with his Report, the members of FMBC voted by written ballot for directors. (Record 582-585). The candidates supported by Respondents received approximately 80 percent of the votes cast. (Record 584).

On October 24, 2005, the Special Master submitted a description of the election and the votes cast for the ten candidates receiving the most votes in a Report of Election Procedures and Results. (Record 582-601). The court issued an Order Certifying Election Results and Appointing the Board of Directors that same day. (Record 602-603).

On November 2, 2005, Petitioners filed a motion to stay the court's October 24, 2005 order, a motion to vacate that order, objections to Respondents' motion to pay the funds in the court's registry to the board of directors, objections to the October 22, 2005 election and the election results, and a request for an evidentiary hearing. (Record 604-657). On November 28, 2005, after hearing and overruling the Petitioners' motions and objections, the Circuit Court entered a final Judgment and Order. Petitioners appealed to the Missouri Court of Appeals. (Record 684).

The Missouri Court of Appeals affirmed the trial court's decision, citing the fact that the trial court considered only the issue of the election of a board of directors for the not-for-profit corporation and did not make any determination regarding the government of the ecclesiastical affairs of the Church. *First Missionary Baptist Church of Ballwin v. Rollins*, 199 S.W.3d 823, 828 (Mo. App. E.D. 2006). ("First Missionary II").

The Court of Appeals noted that courts may deal with property disputes using a neutral-principles-of-law approach. *Id.* at 827. The court stated that the trial court did not consider any religious ritual or doctrine, but instead used the church directory, which Petitioner Rollins acknowledged was a list of the members of the church, to determine who was eligible to vote in an election of the board of directors. In so doing, the trial court avoided improperly involving itself in ecclesiastical matters. *Id.* at 830.

On September 26, 2006, the Missouri Supreme Court denied Petitioners' request for transfer.

## REASONS FOR DENYING THE PETITION

### The Petitioners Present No Compelling Reason To Grant The Petition

The petitioners demonstrate no compelling reason for the Court to grant the petition for writ of certiorari. The rule of law governing the issue involved in this case is properly stated and well settled. This case presents none of the circumstances that Supreme Court Rule 10 lists as indicative of the reasons considered for granting a

petition. Furthermore, The Missouri Court of Appeals correctly applied a properly stated rule of law.

This case does not involve any of the considerations listed in subparagraphs (a) through (c) of Supreme Court Rule 10. Subparagraphs (a) and (b) do not apply because the decision was entered by the Missouri Court of Appeals and not by a United States Court of Appeals or by a state court of last resort. For the reasons stated in the remainder of this brief, Subparagraph (c) does not apply because the questions of federal law presented in this case have been settled by this Court and the decision of the state court does not conflict with the relevant decisions of this Court. Petitioners' complaint essentially is that the Missouri Court of Appeals misapplied a properly stated rule of law.

The Missouri Court of Appeals decision in this case complies with the decisions of this Court. Ever since this Court decided *Jones v. Wolf*, 443 U.S. 595, 99 S.Ct. 3020, 61 L.Ed.2d 775 (1979), it has been well settled that civil courts may resolve church property disputes like the one involved in the instant case on the basis of neutral principles of law and that such an approach is consistent with the First Amendment. *Id.* at 602. In accordance with *Jones*, the Supreme Court of Missouri adopted the neutral principles of law approach as the exclusive method for Missouri courts to resolve church property disputes. In this case, the Missouri Court of Appeals cited the neutral principles of law approach approved by *Jones* and affirmed the trial court's completely secular inquiry as being consistent with that approach. The trial court had determined who was eligible to vote in an election for directors of the not-for-profit corporation which owned the church's assets. In making that determination, the trial court used a

church directory which everyone, including the Petitioners, acknowledged was a list of the members of the church. The trial court did not delve into matters of religious doctrine, ritual or practice. For those reasons and other reasons more fully explored later in this brief, the Court of Appeals' decision comports in all respects with the rule this Court announced in *Jones*. It is extremely interesting to note that despite the fact that this Court's decision in *Jones* states the rule on the application of the First Amendment in church property disputes, the Petitioners fail to distinguish or even mention *Jones* in their Petition.

Contrary to the assertion of Petitioners, the decision by the Missouri Court of Appeals does not conflict with a decision of this Court that Petitioners cite extensively. In *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 96 S.Ct. 2372, 49 L.Ed.2d 151 (1976), this Court dealt with the removal of a bishop within a hierarchical church. The Court held that a civil court could not disturb the decisions of a hierarchical church's highest ecclesiastical tribunal to remove a church official from the ecclesiastical position of bishop. For reasons that are more fully explored in the balance of this brief, *Serbian* is distinguishable from the instant case because, unlike the instant case, *Serbian* dealt with the internal removal of a religious official within a hierarchical church. The instant case does not involve either a hierarchical church or removal of anyone from an ecclesiastical position. It involves a church property dispute and the election of people to corporate positions on a board of directors.

The rules established by *Jones* and *Serbian* illustrate that the scope of permissible civil court action in church property disputes is well-defined and well settled. That being so, the Petitioners' complaint is not that a state

court decided a question that has not been settled by this Court. The assertions contained in the Petition make it clear that Petitioners' actual complaint is that the state court misapplied the rule in *Serbian*. That rule is properly stated, but distinguishable from the instant case.

As more fully stated in the balance of this brief, the decision by the Missouri Court of Appeals in this case follows the rules established by this Court in the *Jones* case. The decision does not conflict with the rule of the *Serbian* case. The relevant decisions of this Court are well-defined and well settled. The Petitioners have failed to present compelling reasons to grant their Petition.

## The Missouri Court Of Appeals Correctly Decided The Question Presented

This matter is not, and never has been, about an ecclesiastical entity. Rather, it has always been about a Missouri not-for-profit corporation. There has never been any dispute among the parties that this corporation was a Missouri not-for-profit corporation and that it had the right to possess and control church assets. Each of the parties' pleadings ask for relief based on the Missouri Not For Profit Corporation Law. Each of the parties based their claim for possession and control of those assets on that statute. The dispute centers around who controls the corporation and thereby controls the church assets.

This Court clearly established that civil courts may resolve church property disputes like the one involved in this case on the basis of neutral principles of law. In *Jones v. Wolf*, 443 U.S. 595, 99 S.Ct. 3020, 61 L.Ed.2d 775 (1979), this Court held that the "neutral principles of law" approach to resolving church property disputes is consistent

with the First Amendment and other constitutional principles. *Id.* at 602. The Court declared that the state has an obvious and legitimate interest in the peaceful resolution of property disputes, and in providing a civil forum where the ownership of church property can be determined conclusively. *Id.*

The Supreme Court of Missouri, citing *Jones*, adopted the neutral principles of law approach as the exclusive method for resolution of church property disputes. *Presbytery of Elijah Parish Lovejoy v. Jaeggi*, 682 S.W.2d 465, 467 (Mo. 1984). Again citing *Jones*, the Court stated that the neutral principles of law method is completely secular in operation, and yet flexible enough to accommodate all forms of religious organization and polity. *Presbytery of Elijah Parish Lovejoy* at 468. In conducting an inquiry using neutral principles of law, courts look to a number of neutral factors for guidance, including the language of the Church's charter and bylaws. *Church of God In Christ, Inc. v. Graham*, 54 F.3d 522, 525 (8th Cir. 1995). Courts may also consider relevant state statutes. *Id.*; *Presbytery of Elijah Parish Lovejoy* at 473-74.

Application of neutral principles of law to a property dispute does not involve an inquiry into ecclesiastical affairs and does not run afoul of the *Serbian*[7] case. *Church of God In Christ, Inc.* at 527. The Court may decline to consider any hierarchical form of organization in resolving a church property dispute. *Id.*

Prior to the decision in First Missionary I that resulted in the remand to the trial court, the Petitioners

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[7] *Serbian Eastern Diocese for the United States of America and Canada v. Milivojevich*, 426 U.S. 696 (1976).

treated this litigation as a property dispute. They demanded court intervention in FMBC's corporate affairs when they filed their Third Party Plaintiffs' Motion for Partial Summary Judgment ("Summary Judgment Motion"). They alleged no ecclesiastical grounds in their motion, only statutory grounds. They requested that the Court "reinstate [Petitioners] as leaders of the Church for all legal, financial and other matters. . . . " They asked the Court to invalidate the election which took place on April 13, 2002, based on the corporate law contained in Missouri Chapter 355. They relied not on ecclesiastical grounds, but on bylaws, statutory provisions and corporate documents in making their claim. In other words, Petitioners, in their Summary Judgment Motion, relied on neutral principles of law.

Only after the Court of Appeals rendered its opinion ordering an election of directors did Petitioners first raise claims that the courts could not act because of ecclesiastical considerations. Faced with the prospect of the fair election mandated by the Missouri Court of Appeals, rather than one in which Petitioner Rollins was able to select his supporters as the only ones who could vote, Petitioners began to see this case in a whole new light. They then claimed that matters pertaining to the election were ecclesiastical issues that could only be determined by Mr. Rollins and his supporters, whom they call "Church Leadership," according to religious doctrine and practice.

In order to resolve this property dispute, the Court of Appeals in First Missionary I recognized the necessity of vesting control of the corporation's assets and affairs in its board of directors. *Id.* at 851. The absence of directors led to the court's instructions that the trial court order an election under certain statutory sections. *Id.* at 852. To

implement the court's direction that an election be held, the trial court had to decide who could vote. The neutral principles of law found in the statutory sections cited in First Missionary I require a determination of the members of the corporation in order to determine the voters eligible to vote for directors. State statutes are among the items that the court may examine under the neutral principles of law approach without violating constitutional principles. *Church of God In Christ, Inc.* at 527; *Presbytery of Elijah Parish Lovejoy* at 473-74.

To conduct the election of directors, the trial court had to determine eligible voters. Section 355.081.2 expressly authorizes the Court to determine who are the members of the corporation.

In applying the neutral principles of law approach, the Court must scrutinize religious documents pertinent to the dispute in purely secular terms. *Presbytery of Elijah Parish Lovejoy*, 682 S.W.2d at 473. In this case the Special Master and the trial court examined a document, the Directory, for purposes of determining who were the eligible voters. The Petitioners admit in their deposition testimony that the Directory contains the list of members. In fact, all parties to the dispute admit that the Directory is the list of church members. The Special Master engaged in the completely secular act of determining which names were on the list and declaring that those individuals were the eligible voters.

The Special Master did not make the religious determinations that Petitioners insist should have been made. The Special Master did not decide whether the members listed in the Directory adhered to religious customs and church teaching, or whether a member had given a public

testimony of faith. The First Amendment prohibits resolution of church property disputes on the basis of religious doctrine and practice. *Jones* at 602; *Presbytery of Elijah Parish Lovejoy* at 467. The trial court and the Special Master could not and did not make these religious inquiries. They properly viewed documents and made determinations in completely secular terms. A civil court must scrutinize church documents in purely secular terms. *Jones* at 604.

Petitioners actually concede that the Circuit Court and the Special Master acted in a purely secular manner. In their Petition, Petitioners state that the trial court ignored the religious customs and biblical criteria employed by the church in making membership determinations. (Petition p. 28). It is undisputed that the trial court and the Special Master engaged in a secular process to determine who was eligible to vote for the corporation's directors. In so doing, the Circuit Court and the Special Master did not make any impermissible ecclesiastical determinations.

Petitioners actually offer two conflicting contentions. They argue that the trial court and the Special Master should not have determined who were church members because they say that is an ecclesiastical matter. On the other hand, they criticize the trial court and the Special Master for ignoring religious custom and religious practices in determining who was a member. (Petition p. 28). As stated above, the trial court and the Special Master properly ignored religious custom and practice and made decisions on a secular basis and, in so doing, acted appropriately.

Petitioners' reliance on *Serbian Eastern Orthodox Diocese for the United States of America and Canada v. Milivojevich,* 426 U.S. 696 (1976) is misplaced. That case is clearly distinguishable from this case. The *Serbian* case involved a hierarchical church in which a local diocese disputed a ruling by its Mother Church. In its own documents, the local diocese spoke of its role as part of the hierarchical church. The diocesan constitution required the diocese to obey the hierarchical pronouncements of the Mother Church. Under those circumstances, the Court would not disturb a decision by the Mother Church's highest tribunal. In contrast, the Bylaws of First Missionary Baptist Church ("Bylaws") state that FMBC is congregational and not hierarchical. (Record 35). Unlike the Serbian church's corporate documents, FMBC's bylaws state that FMBC administers its own affairs and FMBC is not subject to any bishop, presbytery, synod, assembly, convention or conference. (Record 335). Furthermore, the trial court did not decide any matter that had been previously decided by a hierarchical tribunal.

The *Jones* case disclosed an additional distinction between the *Serbian* case and the instant case. *Jones* held that in a church property dispute, courts may apply neutral principles of law and need not defer to decisions of religious authority. *Jones* at 605. This Court decided the *Jones* case after it decided *Serbian*. *Jones* clarified the extent of the holding in *Serbian*. In *Jones,* the court declared that the issue was whether civil courts may resolve a dispute over the ownership of church property on the basis of "neutral principles of law" or whether they must defer to the resolution of an authoritative tribunal of the hierarchical church. The Court held that a state is constitutionally entitled to adopt neutral principles of law

as a means of adjudicating a church property dispute. *Jones* at 604. States are not required to adopt a rule of compulsory deference to religious authority in resolving church property disputes. *Jones* at 605. In fact, the Missouri Supreme Court in *Presbytery of Elijah Parish Lovejoy*, in applying the neutral principles approach approved in *Jones*, declined to consider any hierarchical form of organization in resolving a church property dispute. 682 S.W.2d at 467; *Church of God In Christ, Inc.* at 527. *Serbian* does not govern the instant case because the instant case involves a church property dispute. The trial court was entitled to and did decide the case using neutral principles of law.

The Petitioners rely on *Rolfe v. Parker*, 968 S.W.2d 178 (Mo. App. W.D. 1998), for the proposition that questions regarding church membership are ecclesiastical matters. However, the facts in *Rolfe* are much different than the instant case and *Rolfe* is clearly distinguishable.

Unlike the instant case, the court in *Rolfe* found that the ultimate issue did not involve the corporation. *Id.* at 184. That court concluded that the ultimate issue was who was in the ecclesiastical position of "apostle." *Id.* The apostles formed the governing body of the church, the administrative committee, which was responsible for the church's ecclesiastical and clerical affairs. *Id.* at 180. Therefore, the issue in *Rolfe* was who constituted the ecclesiastical authority of the church, not who controls the assets and affairs of a not-for-profit corporation, as it is here. The court in *Rolfe* held that decisions about who should be removed from the priesthood position of apostle were ecclesiastical matters not within the jurisdiction of a civil court. *Id.* at 184.

The distinction between the instant case and *Rolfe* is that here, in order to resolve a church property dispute, the trial court did not need to determine who could occupy or be removed from an ecclesiastical position. Here no examination of church ecclesiastical positions was necessary. The Court of Appeals' mandate spoke of an election to the secular, corporate positions of directors; not the ecclesiastical positions of apostle, priest, minister or bishop. The *Rolfe* court acknowledged that neutral principles of law may be used to resolve church property disputes which do not involve an examination of religious doctrine. *Id.* at 183. Here neutral principles of law were properly applied because no examination of religious doctrine or religious offices was necessary to determine the not-for-profit corporation members who were entitled to vote for the corporation's directors.

Each of the other Missouri cases cited by Petitioners actually support the Respondents' position that the trial court in this case could properly use neutral principles of law to decide a church property dispute. There is a well-recognized exception to the general rule that determinations of who are qualified members of a church is an ecclesiastical matter. *Fast v. Smyth*, 527 S.W.2d 673, 676 (Mo. App. 1975). The *Fast* case predates both the *Jones* and *Presbytery of Elijah Parish Lovejoy* cases and *Fast* does not discuss the application of neutral principles of law to church property disputes. But *Fast* does support the position that courts are not prohibited from acting where necessary to protect the rights of church members when property is involved. *Id.*

Two other Missouri cases Petitioners cite are inapposite. *Brady v. Pace*, 108 S.W.3d 54 (Mo. App. S.D. 2003), did not involve a church property dispute where the court

could have applied neutral principles of law. *Brady* concerned an alleged defamation of a member by the church's pastors. Even though the court considered the pastors' remarks concerning the member's removal to be ecclesiastical, the court acknowledged that "the First Amendment does not preclude court intervention in disputes between co-religionists when the issue is purely one of whether a religiously neutral civil law is presented." *Id.* at 57.

The general rule cited by Petitioners from *Murr v. Maxwell*, 232 S.W.2d 219, 234 (Mo. App. 1950), omits the qualifying language which immediately follows it. Courts will not question expulsion of members where no question arises as to property rights. *Id.* at 234. The clear meaning of the court's statement is a court may act, just as the trial court did in the instant case, to resolve property rights even if a church and its members are involved.

Three other cases cited by Petitioners are distinguishable from the instant case in at least two very significant respects. Those cases are *Hawkins v. Friendship Missionary Baptist Church*, 69 S.W.3d 756 (Tex. App. 2002); *Lott v. Eastern Shore Christian Center*, 908 So.2d 922 (Ala. 2005), *cert. denied*, ___ U.S. ___, 126 S.Ct. 416, 163 L.Ed.2d 317 (2005); and *Burgess v. Rock Creek Baptist Church*, 724 F. Supp. 30 (D.D.C. 1990).

*Hawkins* illustrates the relevant differences between these three cases cited by Petitioners and the instant case. In *Hawkins*, the court acknowledged that a state may adopt a neutral principles of law approach for resolving church property disputes. *Id.* at 758-59. However, in *Hawkins* and in *Lott* and *Burgess*, the neutral principles of law approach and the ability to resolve the issue presented through a purely secular inquiry was unavailable to the

court. The Petition quoted language from the court's opinion in *Hawkins*. The quote points out why in *Hawkins*, unlike here, the court could not apply the neutral principles of law approach and decide the matter without inquiring into religious doctrine and customs:

> Without governing church documents which could be construed in purely secular terms, the power struggles between the Church, Deacons and Pastor cannot be resolved based on neutral principles of law, but, apparently, only by delving into religious doctrine of polity.

*Id.* at 759.

The excerpt shown above illustrates the distinction between the cases cited by Petitioners and this case. The neutral principles of law and purely secular inquiry which were unavailable in *Hawkins*, *Lott* and *Burgess* were used in the case before this Court.

Various other arguments presented by Petitioners are inaccurate. Petitioners inaccurately characterize the 2002 Church Directory as outdated. The most reliable and unbiased list of church members is contained in the 2002 Church Directory ("Directory"). Prior to the commencement of this litigation, the Church had compiled a list of its members and had included that list in the Directory. This list predated any disputes between groups within the Church. It is an accurate list of church members since it was not generated in anticipation of litigation or to gain an advantage for any group. It is free from the taint of being self-serving since it was created simply to accurately list the members of the Church.

Two of the Petitioners admitted in their depositions that the Directory was a list of Church members.

(Supplemental Record 58; 60; 61-63; 64). Petitioner Rollins admitted that the Directory listed all those who were current members prior to the April 13, 2002, meeting where a vote was taken to oust Rollins as pastor. (Supplemental Record 58). Petitioner Charlet Clay, the Church's administrative assistant, compiled the Directory. (Supplemental Record 60). Charlet Clay also admitted that the Directory was a list of church members.

In determining membership in the corporate entity and eligibility to vote for the corporation's directors, the trial court could not inquire into the matters urged by Petitioners. For the reasons previously stated in this brief, the trial court could not delve into religious customs, practices and teachings. The court did conduct a permissible secular inquiry.

The Petitioners assert that when the Missouri Court of Appeals used the words "fair and equitable" to describe the use of the list of members contained in the 2002 Church Directory, the court was improperly borrowing secular notions of fundamental fairness from civil law and impressing them on internal church governance. The Petitioners claim that the use of the words "fair and equitable" means that the Special Master violated the proscriptions of the *Serbian* case by imposing secular notions of fundamental fairness on matters of ecclesiastical cognizance. Petition 24. Petitioners' argument is flawed because the words "fair and equitable under the circumstances" are contained in Section 355.081.1 which is one of the two statutory provisions the Missouri Court of Appeals required in its mandate that the trial court follow in ordering the election of directors. Section 355.081.1 provides in pertinent part that "the circuit court . . . may order that such a meeting be called or that a written ballot

or other form of obtaining the vote of members . . . be authorized, *in such a manner as the court finds fair and equitable under the circumstances.*" (Emphasis supplied). The Special Master and the trial court properly used the standard contained in a statutory section which they were mandated to follow and the Missouri Court of Appeals recognized that the trial court had complied with the statute.

Petitioners incorrectly state that the Circuit Court permitted various individuals who disassociated themselves from the church to vote for the directors. Petition 26-27. They base that claim on the assertion that some of the Respondents "formed and worshiped under a new Church called 'Remnants First Baptist Church'." Petition 27. None of the Respondents formed or worshiped under a new church.

After the Circuit Court awarded Petitioners summary judgment in October, 2003, Respondents received notice that Mr. Rollins might try to seize Respondents' bank account in which Respondents had placed the money they had raised themselves and from other anti-Rollins church members to pay the expenses of this litigation. Respondents believed Mr. Rollins would use the court's order and claim that he was entitled to all monies with the name FMBC no matter the source of such funds. (Record 276). At that time, Respondents changed the name on the account to "Remnants – First Missionary Baptist Church" to prevent such an attempt. (Record 276).

Petitioners' assertion that Respondents used the name "Remnants – First Missionary Baptist Church" to start a new church is untrue. Respondents used the name only to retitle a bank account, not to start a new church.

The ability of courts to resolve property disputes of this sort benefits churches as well as the society as a whole. In *Jones*, the Court cited the State's obvious and legitimate interest in the peaceful resolution of church property disputes and in providing a civil forum to conclusively determine ownership of church property. 443 U.S. at 602, 99 S.Ct. at 3025. Importantly, one element of this dispute, noted in First Missionary I, was the fact that Commerce Bank interpleaded a sum of money in this action and filed an answer stating that "it lacked sufficient knowledge or information to determine, among other things, which party has the right to possess and control the Church's assets." *First Missionary Baptist Church of Ballwin v. Rollins,* 151 S.W.3d 846, 848 (Mo. App. E.D. 2004). Were this Court to adopt Petitioners' recent position that this entire dispute is an ecclesiastical matter, then disputes such as this one would go unresolved, to the danger and harm of innocent third parties (such as Commerce Bank in the instant matter) who have done no more than conduct arms-length business transactions with the corporate entity. Indeed, it is reasonably foreseeable that should that occur, banks and other entities might well refuse to do business with church bodies, knowing that should a dispute arise, it could not be resolved.

Petitioners argue that the FMBC Bylaws imposed an eligibility requirement beyond just being a member of FMBC. Petitioners claim that eligibility to vote hinged on being a member in "good and regular standing." Petition 25.

In their own documents, Petitioners treat the terms "members" and "active members" as synonymous with those who are eligible to vote. In paragraph 1 of their third party petition, they call themselves "current

members" and "members," not "members in good standing." (Record 99). In paragraph 2, they say they "represent the interest of the Church's members similarly situated." (Record 99). In their "Statement of Uncontroverted Material Facts," they term themselves "current members" and "members." (Record 122). In their Memorandum of Law, they describe their status in the same way. (Record 129). They refer to other members simply as "members." (Record 131). They further state that the corporation must notify its *members* of the meeting at least 10 days before the meeting date. (Record 131-32). In another memorandum, Petitioners talk of a "regular meeting of the *members*." (Emphasis supplied). (Record 146). A letter authored by Petitioners and cited by them as justification for the termination of the membership for all those where were not part of their small group, speaks of "members" and not "members in good standing." (Record 639).

Petitioners' use of the terms "members" and "active members" as synonymous with the term "members in good standing" is reflected in their depositions. Richard Rollins described the 2002 Church Directory as a list of all the "*members*" and "current members." (Emphasis supplied). (Supplemental Record 58; 60). He also used the term "active members." (Supplemental Record 61). He even testified that to determine the number of eligible voters present at a particular time, he would have to see how many "members" of the church there were for that particular year. (S.L. F. 60). He did not mention a need to determine the number of "members in good and regular standing." To determine the number of members, he said he would look to the church registry, which was the Church Directory compiled by Charlet Clay. (Supplemental Record 60). In her deposition Charlet Clay also spoke of

"active members" being listed in the Church Directory. (Supplemental Record 64).

The Petitioners rebut their own contention that the trial court was required to determine the identity of members in "good and regular standing." The documents filed by the Petitioners show that they used the terms "members" and "active members" as synonymous with the term "members in good and regular standing." Petitioners effectively admit that "members" and "active members" were "in good and regular standing." The deposition testimony cited indicates that the 2002 Church Directory contained the names of members and, therefore, it contained the names of eligible voters.

Petitioners assert that the trial court arbitrarily created membership standards that expressly contravened the by-laws when it allowed people listed in the Directory as children to vote. The deposition testimony of Petitioners Richard Rollins and Charlet Clay proves otherwise. Mr. Rollins and Ms. Clay described the Church Directory as a list of all the members. (Supplemental Record 58; 60; 61-63; 64). The only non-members listed in the Directory were members' children under the age of eighteen. (Supplemental Record 63). If the child had attained the age of eighteen, the child was a member. (Supplemental Record 59; 63). Appellant Charlet Clay compiled the Directory. (Supplemental Record 60).

The Special Master's report noted that the Directory lists family children in parentheses after his or her parent. (Record 503). Under the trial court's order, only those children who had attained age eighteen and had, therefore, become members by the record date of January 1, 2002, were to be permitted to vote. (Record 503-504).

The Special Master's report and the trial court's order were based on and supported by substantial evidence. The testimony listed above established that the Church Directory was a list of all the members of FMBC and that the children listed in the Directory were members if they had attained age eighteen. The Respondents respectfully submit that the Missouri Court of Appeals and the trial court did not err as Petitioners contend.

## CONCLUSION

The Petitioners present no compelling reason for this Court to grant the Petition. The rule of law governing the issue involved in this case has been declared by this Court and is well settled. The decision being reviewed does not conflict with any decisions of this Court. This case presents none of the circumstances that Supreme Court Rule 10 lists as indicative of the reasons considered for granting a petition.

In this case the lower court resolved a church property dispute using the neutral principles of law approach approved by this Court in the *Jones* case. The trial court determined the people who were eligible to vote for directors of the not-for-profit corporation which owned the property that was in dispute. In doing so, the court used a church membership directory which the parties admitted contained the members of the church. The court did not determine which individuals "qualify" as members and the court did not add to or subtract from the list of members. It simply looked at the list which was compiled by one of the Petitioners and which two of the Petitioners admitted was the list of members. Since the court used

the Directory to ascertain who was a member, it did not have to make the inquiries into religious ritual and doctrine which Petitioners contend were necessary. The court's use of the Directory and its avoidance of inquiries into religious ritual and doctrine were consistent with the neutral principles of law approach which this Court approved in the *Jones* case.

Respondents respectfully request that the Petition For Writ Of Certiorari be denied.

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